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**Malik Roofing Corporation and Sheet Metal Workers
International Association, Local No. 18. Case
30-CA-15752-1**

June 21, 2002

DECISION AND ORDER

**BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND BARTLETT**

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Sheet Metal Workers International Association, Local No. 18, the Union, on November 20, 2001, the General Counsel issued the complaint on January 31, 2002, against Malik Roofing Corporation, the Respondent. The complaint alleges that the Respondent has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On March 20, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On March 22, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that, unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 21, 2002, notified the Respondent that unless an answer was received by March 1, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the business of manufacturing, distributing, and installing roofing systems out of its Whitewater, Wisconsin facility. During the past calendar

year, the Respondent, in conducting its operations, purchased and received products, goods, and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

[A]ll employees of the Employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit.

On May 17, 2000, the Respondent and the Union signed an Assumption of Agreement. By entering into the Assumption of Agreement, the Respondent agreed to be bound by all the terms and conditions of the Union's collective-bargaining agreement with Southeastern Sheet Metal Contractors Association, Inc., the Association, effective from September 1, 1998, through August 31, 2001.

On May 31, 2000, the Respondent and the Union signed a Letter of Assent, by which the Respondent recognized the Union as the representative of the unit. The Respondent also agreed in the Letter of Assent to be bound to any successor agreement to the 1998-2001 collective-bargaining agreement between the Union and the Association.

At all times since May 31, 2000, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit employees for purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment.

Since about October 2000, and particularly since about May 20, 2001, and continuing to date, the Respondent has failed and refused to pay the contributions required by the terms and conditions of the 1998-2001 collective-

bargaining agreement between the Union and the Association. The Respondent engaged in this conduct without prior notice to the Union, without affording the Union an opportunity to bargain over this conduct, and without the consent of the Union.

By letter dated August 3, 2001, the Respondent repudiated its agreement to be bound by the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and the Association, and its successors, and withdrew recognition of the Union as the exclusive collective-bargaining representative of the unit, effective August 31, 2001.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees in the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees; to comply with the Assumption of Agreement, the Letter of Assent, and the terms and conditions of the 1998–2001 agreement between the Union and the Association; and to make whole the unit employees for any loss of wages or earnings they may have suffered as a result of the Respondent's failure to abide by these agreements since August 3, 2001. In addition, we shall order the Respondent to make whole the unit employees by making all contractually required contributions that have not been made since October 2000, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).¹ Further, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions since October 2000, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir.

¹ To the extent that an employee has made personal contributions to a benefit or other fund that have been accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Malik Roofing Corporation, Whitewater, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively and in good faith with Sheet Metal Workers International Association, Local No. 18, as the exclusive collective-bargaining representative of the employees in the following unit:

[A]ll employees of the Employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing, and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

(b) Failing and refusing to comply with the Assumption of Agreement, the Letter of Assent, and the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and Southeastern Sheet Metal Contractors Association, Inc., and failing to make contractually required contributions for unit employees.

(c) Impermissibly repudiating its agreement to abide by the terms and conditions of the Union's 1998–2001 collective-bargaining agreement with Southeastern Sheet Metal Contractors Association, Inc., and impermissibly withdrawing recognition of the Union as the exclusive collective-bargaining representative of the unit.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit set forth above.

(b) Comply with the Assumption of Agreement, the Letter of Assent, and the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and Southeastern Sheet Metal Contractors Association.

ciation, Inc., and make whole the unit employees for any loss of wages and other benefits they may have suffered as a result of its failure to abide by these agreements since August 3, 2001, with interest as prescribed in the remedy section of this decision.

(c) Make all contributions required by the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and Southeastern Sheet Metal Contractors Association, Inc., and make whole the unit employees by making all contractually required contributions that have not been made since October 2000, including any additional amounts applicable to such delinquent payments, and by reimbursing the unit employees for any expenses incurred as a result of its failure to make contributions since October 2000, with interest as described in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Whitewater, Wisconsin, copies of the attached notice marked “Appendix.”² Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Dated, Washington, D.C. June 21, 2002

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| Peter J. Hurtgen, | Chairman |
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| Wilma B. Liebman, | Member |
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| Michael J. Bartlett, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with Sheet Metal Workers International Association, Local No. 18, as the exclusive collective-bargaining representative of the employees in the following unit:

[A]ll employees of the Employers engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing, and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; and (e) all other work included in the jurisdictional claims of Sheet Metal Workers’ International Association.

WE WILL NOT fail and refuse to comply with our Assumption of Agreement, our Letter of Assent, and the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and Southeastern Sheet Metal Contractors Association, Inc., and WE WILL NOT fail to make contractually-required contributions for unit employees.

WE WILL NOT impermissibly repudiate our agreement to abide by the terms and conditions of the Union's 1998–2001 collective-bargaining agreement with Southeastern Sheet Metal Contractors Association, Inc., and WE WILL NOT impermissibly withdraw recognition of the Union as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the above unit.

WE WILL comply with our Assumption of Agreement, our Letter of Assent, and the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and Southeastern Sheet Metal Contractors Association, Inc.

WE WILL make whole the unit employees for any loss of wages and other benefits they may have suffered as a result of our failure to abide by these agreements since August 3, 2001, with interest.

WE WILL make all contributions required by the terms and conditions of the 1998–2001 collective-bargaining agreement between the Union and Southeastern Sheet Metal Contractors Association, Inc., and make whole the unit employees by making all contractually required contributions that have not been made since October 2000, including any additional amounts applicable to such delinquent payments, and by reimbursing the unit employees for any expenses incurred as a result of our failure to make contributions since October 2000, with interest.

MALIK ROOFING CORPORATION